IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.W.P.NO.3184 OF 2005

Nakhuda Mohamed Ali Rogay ..Petitioner

Vs.

State of Maharashtra
& Ors. ..Respondents

Mr.Girish Kulkarni i/b Ashok Law Firm for Petitioner
Mr.M.S.Mhambre A.P.P. for Respondent 1-State
Smt.A.N.Pathan for Respondent 2-B.M.C.
Mr.A.P.Munderagi with Mr.Chirag Balsara i/b Divya Shah Associates for Respondent Nos.7 to 18.

CORAM: SMT.RANJANA DESAI & SMT.V.K.TAHILRAMANI,JJ.

DATE : JANUARY 23, 2007

P.C.

1. In short, it is the case of the petitioner that respondents 7 to 18 who are Trustees of the Juma Masjid Trust have illegally cut several trees standing on the plot situated at Sonapur lane, Mumbai-400002. In this petition, the petitioner has inter alia prayed that respondent 1 be directed to register offence against the persons involved in felling and/or causing to fell trees in Bada Kabrastan situated at Sonapur lane, Mumbai. It

appears that on 25.9.2006 this Court had directed that Tree Authority as well as the Board of Trustees of Kabrastan to conduct census of the trees which are existing in the area of the Trust and which were illicitly caused to be felled without taking permission from the Tree Authority. The report was to be submitted to this Court within two weeks. Accordingly, respondent 2 has carried out the census and report dated 4.1.2007 was submitted to this Court. Following conclusions are found in the report:

> "Poor method of debarking for numbering of trees resulted in danger to the life of the trees. The danger has arisen because too big areas of inner trunks are exposed after bark removal. Moreover, complete rings (more accurately - cylinders) of bark around the trunks of trees have been removed from a depth that has caused removal of cambial (regenerative) and food-conducting tissues, making it impossible for the trees to restore health, leading to mortality."

2. It is not possible for this Court to go into the disputed questions of fact and find out whether the respondents are infact guilty of any felling of trees or removal of bark of trees. The learned counsel for respondents 2 and 3 states that respondents 2 and 3 propose to file a complaint in the light of the report dated 4.1.2007. The present petition can therefore, be disposed of with following observations:

. If respondents 2 and 3 file any complaint against respondents 7 to 18 based on the report dated 4.1.2007, it will be open to respondents 7 to 18 to take such steps as are provided in law in connection with the same. We find that the letter dated 5.1.2007 sent by Mr.Chaphekar indicates that within the time limit imposed by this Court, only 400 trees could be covered. We make it clear that if 2nd and 3rd respondents find that there is illegal felling or removal of barks of more trees, it will be open to them to initiate action as provided in law. Needless to say that it will be open to respondents 7 to 18 to defend the said action in accordance with law. We make it clear that we have not examined

contentions raised in this petition on merits. We have not expressed any opinion on any aspect of the matter and all contentions of all the parties are kept open. We are informed by the learned counsel for respondents 2 and 3, that as per the order dated 25.9.2006 expenses of census were to be recovered from the respondent-Waqf. Our attention is also drawn to order dated 16.10.2006 passed by this Court. This Court has made it clear in this order that expenses for carrying out the census of the trees would be borne by the Trustees of the Trust. We expect the Trustees to comply with these directions. We are informed that total expenses for carrying out census incurred by the Tree Authority is to the extent of Rs.6,719/-. We expect the Trustees to pay this amount within a period of two weeks.

3. Petition is disposed of in the aforestated terms.

[SMT.V.K.TAHILRAMANI,J.] [SMT.RANJANA DESAI, J.]